

Appendix "A".

Excerpt from Interstate Commerce Commission decision, *Ex Parte No. 104*, decided December 12th, 1933.

PENNSYLVANIA DOCK & WAREHOUSE COMPANY

The Pennsylvania Dock & Warehouse Company, hereinafter termed the warehouse company, was incorporated under the laws of the State of New Jersey on February 4, 1929. On August 20, 1929, the Pennsylvania leased to the warehouse company a parcel of land in Jersey City containing 377,400 square feet. The Pennsylvania joined with the warehouse company in the construction of the leased land of a modern warehouse and cold storage plant, consisting of three units. Unit No. 1 was to be devoted to cold storage and Units Nos. 2 and 3 to a general warehousing business. The Pennsylvania advanced large sums of money toward the construction of the project, and went to considerable expense in clearing ground and replacing track and float bridges located on the property to be used as a site for the proposed warehouse. Consideration had been given to such a project for the past 20 years, but the movement had not gained momentum until the prosperous era of 1924 and 1925.

The warehouse is of reinforced concrete construction, equipped to render complete service, including cold storage, pool-car distribution, bonded warehousing, warehousing on a package basis, and general warehousing. The complete unit extends 970 feet on the waterfront and is 320 feet in depth. It is served with seven Pennsylvania sidings, three tracks entering unit No. 1 and two tracks entering unit No. 2 and unit No. 3. The main trucking entrance is a concrete drive 60 feet wide. Shipments can be handled direct from lighters and steamers.

The lease runs for 21 years, at an annual rental of \$50,000 for the first 11 years, with a subsequent rental to be fixed at 5 per cent of the value of the land as determined at the end of 11 years. Common use of considerable of the property was provided for. The lessee has the option of renewing the lease for two additional terms of 21 years each. The lessee is to pay all taxes, assessments and duties. The lessee was to construct a warehouse and cold storage building at an approximate cost of \$6,756,000 and \$1,780,000 respectively. The Pennsylvania controlled every important detail in the construction of the warehouse. The lease provides in part:

The said warehouse buildings * * * shall be constructed of material and in accordance with plans and specifications to be approved by the parties hereto, * * * and the lessee shall deliver to the lessor within six (6) months after the completion of the said structures a complete statement in such form and detail as the lessor shall require, verified by affidavit of the President of the lessee of the amount expended by lessee in the construction thereof.

The lessor required the lessee to furnish a bond, in the amount of \$1,000,000, pending for construction and completion of the facilities to the satisfaction of the lessor and at the times provided in the agreement. Failure of the lessee in any of these respects forfeited the bond to the lessor, and conferred upon the lessor the right to complete construction of the facilities. The lessor not only controlled every detail of construction, but dictated the rights of the lessee to place mortgages on the premises, and provided that the lease should not be assigned without prior consent of the lessor. The privilege of subletting any portion of the warehouse buildings was also covered by the agreement.

The lease further provided that the lessee will give preference to traffic passing over the lessor's railroad lines and that the warehouse building will not be used for any purpose inimical to the lessor, and that if the proper relationships between lessee and lessor cannot be brought about, the lessor may recapture the entire property under certain terms and conditions. The Pennsylvania secured an interest in the warehouse company through the purchase for cash of junior bonds of the warehouse company, aggregating \$1,500,000, which were subordinate to the first mortgage bonds of \$5,750,000. As security for further advances to the warehouse company, the Pennsylvania obtained additional junior bonds of the warehouse company amounting to \$1,300,000. To complete the construction of the building the Pennsylvania advanced an additional \$1,316,000. The Pennsylvania, therefore, contributed \$4,116,000 directly to this warehouse project, which is constructed on its lands valued at \$1,132,200, the two totaling \$5,248,200. No rent for the land and interest on the \$5,116,000 had been paid. The warehouse company has been in receivership since July, 1931.

Other expenditures by the Pennsylvania in furtherance of the construction of this warehousing project were for the new piers. Pier D cost the carrier \$1,645,000 and Pier F \$1,825,000. Total investment in connection with piers and warehousing facilities was \$9,000,000, a large part of which was the expense of removing old facilities to clear the site.

GENERAL COLD STORAGE COMPANY.

The General Cold Storage Company was incorporated under the laws of New Jersey on July 31, 1929. It has operated Unit No. 1 of the Pennsylvania Dock & Warehouse Company as a cold storage plant since September

14, 1930. Differences arose as to what rent it was to pay, and up to July 16, 1931, it paid \$28,000. No rental has since been paid, and no formal agreement as to the rental has been executed, although the monthly rental was understood to be \$24,791.42. Although no rent was paid for the use of these facilities, the General Cold Storage Company's income statement for the year ended December 31, 1931, showed a deficit of \$2,247.35.

The traffic officials of the Pennsylvania took an active part in the selection of an operator for the cold storage facilities in connection with this warehouse project.

It appears clear that the interest of the Pennsylvania in the warehousing and storage facilities was to meet the storage rates of its competitors. Although the Pennsylvania denied it has taken any part in the operation of the warehouse company, and claims it is not in the cold storage business, the evidence shows a very close relationship between the operating companies and that carrier.

Appendix "B".

Excerpt from Interstate Commerce Commission Decision, *Ex Parte No. 104*, decided June 8, 1936.

THE PENNSYLVANIA RAILROAD COMPANY

Pennsylvania Piers. The Pennsylvania continues to operate piers described at page 162 in the prior report. Changes have been made since the issuance of that report with respect to flour traffic and the charges for storage of goods under so-called "storage-in-transit" arrangements. Both of those subjects are later discussed.

Harborside Warehouse Company. The Harborside warehouse was originally planned to attract competitive traffic to the Pennsylvania. Although it was not the intention

of the Pennsylvania to operate the warehouse directly—and it does not propose to do so in the future—no important part of the planning, financing, refinancing, or operation of the building has been or is conducted, except under the domination or at least the direction of the Pennsylvania. The subsidiary companies involved are shown below, and the record is entirely conclusive that the warehouse operations are part of the Pennsylvania's general railroad operations, and at the most, the former are separated from the latter only by an imaginary line.

The building now occupied by the Harborside Warehouse Company was formerly occupied by the Pennsylvania Dock & Warehouse Company and General Cold Storage Company, and is discussed in the prior report, beginning at page 165. We there found *inter alia*, that on August 20, 1929, the Pennsylvania leased to the Pennsylvania Dock & Warehouse Company, hereinafter termed the warehouse company, or the bankrupt company, a parcel of land in Jersey City containing 377,400 square feet, on which the lessee was to construct a warehouse and cold-storage building at an approximate cost of \$6,756,000 and \$1,780,000, respectively; that the Pennsylvania controlled every important detail in the construction of the warehouse and contributed \$4,116,000 directly to the project, which was constructed on the carrier's land valued at \$1,132,200, the two totaling \$5,248,200; that no rent for the land or interest on the \$4,116,000 had been paid; that other expenditures were made by the Pennsylvania in furtherance of the construction of this warehousing project, namely, for two piers costing \$1,645,000 and \$1,825,000, respectively; that the total investment in connection with these piers and warehousing facilities by the Pennsylvania was approximately \$9,000,000, a large part of which was the expense of removing old facilities to clear the site;

and that the warehouse company had been in receivership since July, 1931.

We further found that the General Cold Storage Company had operated Unit No. 1 of the warehouse building as a cold-storage plant since September 14, 1930, and that although no rent was paid for the use of these facilities after July 16, 1931, that company's income statement for the year ended December 31, 1931, showed a deficit of \$2,247.35; and that although the Pennsylvania denied it had taken any part in the operation of the above companies, and claimed it was not in the cold-storage business, the evidence showed a very close relationship between the operating companies and that carrier.

At the further hearing it developed that while foreclosure proceedings instituted by a bondholder's committee were pending, officials of the Pennsylvania conferred with that committee with respect to the situation, and on January 24, 1933, a plan of reorganization of the warehouse company was jointly adopted by that committee, the Pennsylvania, and the American Contract and Trust Company, hereinafter called the trust company, a wholly-owned subsidiary of the Pennsylvania. Under that plan a new company, called the Harborside Warehouse Company, Incorporated, was formed to acquire and operate the warehouse. The trust company agreed to provide the new company with an aggregate of \$1,500,000 in cash to pay accrued taxes and expenses of reorganization, to provide working capital, and to absorb losses which under then-present conditions it was expected would occur in the operation of the property. For this purpose it agreed to purchase, or cause its nominee to purchase, from the Harborside Company from time to time on demand, not exceeding an aggregate of \$1,500,000 of the principal amount of an authorized \$2,500,000 issue of new 40-year six per cent leasehold mort-

gage bonds. In consideration of this the trust company was to receive from the bondholders' committee the entire capital stock of the new company to be outstanding at the completion of the reorganization.

Under the reorganization plan the Harborside Company was authorized to issue \$5,750,000 of 40-year 6 per cent income bonds, junior to the new leasehold mortgage bonds; holders of the leasehold mortgage bonds of the bankrupt company could exchange their bonds for the new income bonds; or the trust company would purchase or cause to be purchased by its nominee all bonds of the bankrupt company at 35 per cent of their face value. The plan also provided that the Pennsylvania would make an agreement with the Harborside Company to complete, or cause to be completed, the construction of the warehouse and cold-storage plant without cost to the Harborside Company, and that the Pennsylvania would modify or supplement the lease described in the prior report so that the term would extend beyond the maturity date of the mortgage bonds and income bonds of the new company.

The reorganization plan was put into effect, and the reorganization committee purchased for \$2,100,000 at a bankruptcy sale on September 27, 1933, all of the property and assets of the bankrupt company. It also purchased for \$3,500 all of the assets of the cold storage company. The Harborside Company, whose principal officials are likewise officials of the Pennsylvania, was incorporated in New Jersey on September 30, 1933, and on October 23, 1933, at a meeting of its board of directors, the reorganization committee assigned to the new company all its right, title, and interest in and to their bids at the sale. The board of directors also authorized the issuance of the above-mentioned bonds. The trust company spent about \$1,900,000 in buying some of the first mortgage bonds of the bankrupt com-

pany at 35 cents on the dollar, and secured a loan of about \$1,700,000 in cash from the Pennsylvania before completion of the warehouse. The General Cold Storage Company was dissolved in June, 1934.

As a result of the above transactions, the Pennsylvania through its subsidiary trust company now owns the building, which was built at a cost of between \$8,000,000 and \$9,000,000. The property was purchased under foreclosure for \$2,100,000 and the Pennsylvania has invested a total of between \$7,000,000 and \$8,000,000 in the project. At the time of the further hearing, suit had been brought by the Pennsylvania to recover \$5,000,000 from the surety company which guaranteed completion by the bankrupt company of the building.

The Harborside Company building, equipped with a steam plant and an extensive refrigeration plant, is now operated as a commercial warehouse. It contains about 1,750,000 square feet of space used for dry storage and about 350,000 square feet used for cold storage. Considerable space of both kinds is used by the Harborside Company for its storage operations, which include all of the incidental services necessary in conducting a competitive commercial warehouse business. Such space is charged for on a square-foot basis or in some instances according to the weight of the articles stored. The services, such as handling and marking the goods stored, which in most or all cases are owned by shippers in interstate commerce, are charged for on a man-hour basis. The warehouse does not operate a distributing or trucking service, but will arrange for such service for its customers. No pool cars have been handled to the present time, as at some other railroad-owned or controlled warehouses in New York, for the reason that the Harborside Company has not considered that business desirable. Space is also rented on a

square-foot basis to tenants, most or all of whom are also shippers in interstate commerce, whose business necessities require them to store, manufacture, blend, pack or perform a similar trade process on the goods handled.

During the life of the National Recovery Administration, the storage operations of the warehouse were conducted in accordance with the warehousemen's code, and the basis for charges under the code were continued to the time of the further hearing. While it does not appear from the record that this respondent has indulged in price cutting on storage or space rented to the same extent as other respondents, it is clear that under some circumstances it engages in practices which offer opportunities to defeat requirements of the act. Among such practices are alterations made in space rented to shippers in order to fit the needs of the particular business in which the shipper engages. Free rental for a period of time at the beginning of a lease term is in some cases allowed, the amount of time for which no rental is collected apparently being governed by the desirability of the tenant from a landlord's standpoint. While it is not customary to do so, in one instance of record money was advanced to shippers to pay general freight and custom charges and in several instances charges for storage were not collected when due. In those cases respondent claims to have been amply secured because the value of the stored goods was greatly in excess of the past-due storage charges.

Under the above circumstances, the extent of the services performed by the Pennsylvania for its shipper tenants must vary from time to time, and as a result the compensation received by that respondent for a given service likewise varies. Such arrangements are contrary to the principles of the act.

The rates charged for rental space such as has been previously discussed range from 40 to 70 cents per square foot per annum. It was testified on behalf of the respondent that in fixing the rates for storage and rental the out-of-pocket costs were obtained, but it was developed that such costs did not take into account charges for depreciation on the building or on the refrigerating and similar machinery used in conducting the operations. The value of the building is carried on the books of the Harborside Company as \$7,350,000. An exhibit of record shows that the net income of the Harborside Company for the seven months period ended April 30, 1935, was \$18,800.71. If depreciation at 2 per cent on the book value of the building had been charged a net loss of \$66,949.29 would have resulted. The reason advanced for the failure to include depreciation as an element of cost was that the property was acquired by the Pennsylvania at a price far below its real value and capitalized in such a way that it was unnecessary to take into account a depreciation charge.

We cannot too strongly condemn such accounting methods when used by carriers subject to the act to arrive at costs of services sold to shippers, the value of which affects or determines the charges for transportation. In *Winston-Salem Southbound Ry. Co.*, 84 I. C. C. 581, 583, we said:

Depreciation has been defined by us as the "lessening in worth of physical property due to use or other causes." Each of the components of perishable property must at some time end and as each unit ages, its service capacity also lessens in value. Potential use is limited or curtailed by the length of time property or any of its parts has seen service and a consequent diminution in value ensues.

We have likewise held that the service life of any piece of property which is subject to depreciation begins to de-

crease from the time it is put in service. *Augusta Northern Ry.*, 125 I. C. C. 14. It is unnecessary to cite further cases to support these statements.

Summary of Principal Findings of Fact.

1. The Pennsylvania, through a wholly-owned subsidiary, owns and controls the Harborside Warehouse Company. No important activity of the Harborside Warehouse Company is conducted except under the domination, or at least the direction of the Pennsylvania officials.

2. The Harborside Warehouse Company is engaged in the commercial warehouse business. It and other warehouse companies in the Port of New York district compete for the storage of goods transported in interstate commerce by the Pennsylvania.

3. The Pennsylvania does not set up as an element of the cost of operation of the Harborside Warehouse Company the depreciation charges on the building it occupies. Depreciation is one of the elements of cost in the operation of a warehouse.

We find that in determining the out-of-pocket costs of providing warehouse space for shippers in interstate commerce, the Pennsylvania must take into account as an item of expense the depreciation on its warehouse buildings and facilities used and owned directly or indirectly by it, and that failure to take into account all proper costs in providing warehouse or storage space for shippers in interstate commerce constitutes a device to provide such space at less than cost, and thus evade the provisions of Sections 2, 3, and 6 of the Interstate Commerce Act.

